

**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**

ATTORNEY FOR APPELLANT:

**JOSEPH F. THOMS**  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**ROBYN M. WILLIAMSON**  
Deputy Attorney General  
Indianapolis, Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

WILLIAM RANDOLPH,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)

No. 49A02-0512-CR-1194

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Carol Orbison, Judge

Cause No. 49G17-0510-CM-181147

**August 28, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

## SHARPNACK, Judge

William Randolph appeals his conviction for domestic battery as a class A misdemeanor.<sup>1</sup> Randolph raises one issue, which we restate as whether the State presented sufficient evidence to negate Randolph's self-defense claim. We affirm.

The facts most favorable to the conviction follow. Randolph and Jessilyn Overstreet were living together in an apartment in Indianapolis, and had two children in common. On October 19, 2005, Overstreet awoke around 4:00 a.m. to find Randolph not in bed. Overstreet got up to look for Randolph and discovered him sleeping in her car with the engine running in the apartment parking area. Overstreet opened the car door, removed the keys from the ignition, and proceeded back inside to the apartment. Randolph awoke and followed Overstreet back into the apartment.

Once inside the apartment, Randolph and Overstreet got into an argument concerning their involvement in a car accident earlier that week. Randolph was upset because he felt Overstreet should have taken their children to the doctor to have them checked out following the accident. The couple continued to argue while Overstreet got ready for work and got the children ready for daycare. Overstreet took the children down to the car; Randolph followed, took the baby from the car, and then proceeded back into the apartment. Overstreet followed Randolph into the apartment and tried to take the baby from him, but he kept the baby away from her. In an attempt to get Randolph to release the baby, Overstreet grabbed Randolph around the neck, scratching him. The

---

<sup>1</sup> Ind. Code § 35-42-2-1.3 (2004).

struggle continued back and forth, but Overstreet was unable to get Randolph to give up the baby. Overstreet walked around Randolph and pleaded with him to return her baby. Overstreet exclaimed, “I’m not leaving here without the baby, I’m not going anywhere unless I get the baby.” Transcript at 9.

Randolph set the baby down on a sofa and began to barricade the door with a table, a small chair, and a sofa. Randolph told Overstreet that he was going to get her for putting her hands on him. Randolph grabbed Overstreet by the arms and began tossing her around. He then threw Overstreet to the ground, tossed her around further, choked her, and covered her mouth and nose with his hands. Overstreet was unable to breathe and thought she was going to die. While Overstreet struggled, she bit Randolph in an attempt to free herself. Randolph allowed Overstreet to get back to her feet, then hit the back of her head against the wall leaving a lump on her head.

Overstreet pleaded with Randolph and was finally able to convince him to retrieve their other child from the car. Randolph left the apartment to retrieve the child, and Overstreet exited the apartment through another door. Overstreet got outside and saw that Randolph had retrieved the child from the car but had not locked the doors. Overstreet entered the car, locked the doors, and called the police. As a result of the incident, Overstreet sustained a lump on her head and a hyperextended wrist, and reported being sore overall.

On October 19, 2005, the State charged Randolph with the following offenses: (1) Count I, battery as a class A misdemeanor,<sup>2</sup> and (2) Count II, domestic battery as a class A misdemeanor. On December 1, 2005, Randolph proceeded to a bench trial. Overstreet was the State's only witness, and she testified against Randolph at trial. Randolph testified on his own behalf and claimed self-defense. The trial court found Randolph guilty of battery and domestic battery and entered judgment of conviction for domestic battery as a class A misdemeanor. The trial court sentenced Randolph to a term of 365 days in jail with 277 days suspended to probation.

The sole issue is whether the State presented sufficient evidence to negate Randolph's self-defense claim on his domestic battery charge. Randolph argues that the State did not present sufficient evidence to rebut his claim beyond a reasonable doubt, and therefore his conviction for domestic battery was improper.

A valid claim of defense of oneself or another person is legal justification for an otherwise criminal act. Ind. Code § 35-41-3-2(a); Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). To establish a claim of self-defense, a defendant must show that: (1) he was in a place where he had a right to be; (2) he acted without fault; and (3) he had a reasonable fear of death or great bodily harm. Lampkins v. State, 778 N.E.2d 1248, 1253 (Ind. 2002). When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. Wilson v. State,

---

<sup>2</sup> Ind. Code § 35-42-1-1 (2004) (subsequently amended by Pub.L.No. 2-2005, § 125 (eff. Apr. 25, 2005)).

770 N.E.2d 799, 800 (Ind. 2002). If a defendant is convicted despite his claim of self-defense, an appellate court will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. Id. at 800-801.

The standard of review for a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. Sanders v. State, 704 N.E.2d 119, 123 (Ind. 1999). We neither reweigh the evidence nor judge the credibility of witnesses. Id. If there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed. Id.

As noted above, to establish a claim of self-defense, a defendant must establish, in part, that he had a reasonable fear of death or great bodily injury. Randolph did not have a reasonable fear of death or great bodily harm when he tossed Overstreet around, threw her to the ground, choked her, and hit her head against a wall. The reasonableness of a defendant's belief that he was entitled to act in self-defense is determined from that point in time at which the defendant takes arguably defensive action. Henson v. State, 786 N.E.2d 274, 278 (Ind. 2003). That belief must be supported by evidence that the alleged victim was imminently prepared to inflict bodily harm on the defendant. Id.

Though Overstreet testified she was the initial aggressor in the domestic dispute, at the time Randolph initiated his alleged defensive action, Overstreet no longer posed an imminent threat of death or great bodily harm nor could her conduct have supported a reasonable belief that she was imminently prepared to inflict death or great bodily injury.

In an attempt to free her baby from Randolph's arms, Overstreet admitted she grabbed Randolph's neck and scratched him. However, following Overstreet's initial aggressive act, she no longer made any other physical contact, oral threats, or threatening gestures toward Randolph before he initiated his attack on her. On the contrary, at the time of Randolph's attack, Overstreet was trying to persuade Randolph to return her child. Overstreet even testified that when her attempts to get Randolph to release the child failed, she said, "I just kinda [sic] *walk[ed] around* and said well I'm not leaving here without the baby." Transcript at 9 (emphasis added). Nevertheless, Randolph responded by first, setting the baby down, then barricading the door with various furniture items. Randolph then told Overstreet that he was going to get her for putting her hands on him. It was only after Randolph had taken the time to place the baby aside, methodically barricade the exit, and utter vengeful words that he carried out his alleged defensive action. Randolph grabbed Overstreet, tossed her around by the arms, threw her to the ground, and choked her to the point where she could no longer breathe. Randolph allowed Overstreet get back on her feet, only then to slam the back of her head against the wall. Even if this Court were to assume Randolph was entitled to act in self-defense as an immediate response to Overstreet's initial aggressions, after she had been tossed, thrown to the ground and choked, it would be unreasonable to say that Overstreet could have still posed any real threat to Randolph. In support of this, Overstreet testified that when Randolph was choking her on the floor, she was unable to breathe and feared she

was going to die. As such, it was unreasonable for Randolph to have believed that Overstreet posed an imminent threat of death or great bodily harm to him.

Furthermore, even if Randolph did fear for his life, his actions were greatly disproportionate to the threat. The amount of force which is reasonably necessary to defend oneself is determined from the standpoint of the accused in light of the surrounding circumstances. Geralds v. State, 647 N.E.2d 369, 373 (Ind. Ct. App. 1995), trans. denied. However, the force used must be proportionate to the requirements of the situation. Id. Where a person has used more force than is necessary to repel an attack, the right to self-defense is extinguished, and the ultimate result is that the intended victim becomes the perpetrator. Id. In the instant case, even if we assume Randolph was defending himself from Overstreet grabbing and scratching of the back of his neck, Randolph's response of tossing, throwing, choking, and slamming Overstreet was not proportionate to the situation. Thus, we must disagree with Randolph's assertion and conclude that the State presented sufficient evidence to negate beyond a reasonable doubt at least one necessary element of Randolph's self-defense claim.

The State was required to prove beyond a reasonable doubt that Randolph knowingly or intentionally touched Overstreet, who has children in common with Randolph, "in a rude, insolent, or angry manner that result[ed] in bodily injury" to Overstreet. See Ind. Code § 35-42-2-1.3. The evidence most favorable to the judgment indicates that Randolph has children in common with Overstreet and that Randolph tossed, threw, choked, and slammed Overstreet's head and body. Thus, the evidence is

sufficient to sustain his conviction for domestic battery. See, e.g., Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000) (affirming the defendant's conviction where the evidence was sufficient to negate the defendant's claim of self-defense).

For the foregoing reasons, we affirm Randolph's conviction for domestic battery as a class A misdemeanor.

Affirmed.

NAJAM, J. and ROBB, J. concur